

CLAUDIA SLOVINSKY (CS-1826)  
Law Offices of Claudia Slovinsky  
396 Broadway, Suite 601  
New York, NY 10013  
Telephone: (212) 925-0101  
Facsimile: (212) 219-9412  
ATTORNEY FOR PLAINTIFF

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

WARREN HILARION EUSTA JOSEPH,

Plaintiff

VS.

U.S. Department of Homeland Security,  
Washington, DC 20528;

and

Michael Chertoff, in his official capacity  
as Secretary of the Department of  
Homeland Security

Defendants.

Case No. \_\_\_\_\_

Honorable \_\_\_\_\_

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

# INTRODUCTION

1. This action challenges the Department of Homeland Security’s (“DHS”) failure to produce records, as requested by Plaintiff Warren Joseph under the Freedom of Information Act (“FOIA”). This action is brought under the Freedom

of Information Act, 5 U.S.C. § 552 and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq., to compel the production of US Citizenship and Immigration Services (“USCIS”) and US Immigration and Customs Enforcement (“USICE”) files and any and all other records maintained by DHS on Plaintiff Warren Joseph.

### **JURISDICTION & VENUE**

2. This court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii), the Freedom of Information Act and 5 U.S.C. §§ 701-706, the Administrative Procedures Act.

3. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B). Plaintiff Joseph is detained in and is a resident of the District of New Jersey.

### **PARTIES**

4. Plaintiff Warren Hilarion Eusta Joseph is a lawful permanent resident who has lived in the United States since 1987. He submitted a FOIA request for production of all DHS records on him on December 6, 2004, and has yet to receive a response.

5. Defendant Department of Homeland Security is a Department of the Executive Branch of the United States Government. DHS is an agency of the United States within the meaning of 5 U.S.C. § 552(f), and has possession and control over the records that Plaintiff seeks.

6. Defendant Defendant Michael Chertoff is Secretary of the Department of Homeland Security, under which USCIS and USICE operate. Defendant Chertoff is responsible for DHS compliance with the laws of the United States and regulations promulgated thereunder, including the laws and regulations at issue in this case.

### **FACTUAL ALLEGATIONS**

7. Mr. Joseph is a Gulf War I veteran of the United States Army, who was injured in the course of duty in Iraq. He received numerous awards and commendations recognizing his valiant service in that war.

8. Mr. Joseph applied for naturalization three times, under special provisions applicable to military veterans. Mr. Joseph first applied for naturalization in 1996, after active duty and while in the Army Reserve, and one other time in 1998. He was interviewed by the Immigration Service under his first application yet never received an adjudication. He then applied again but received no adjudication of his second application. His most recent naturalization application is pending.

9. Mr. Joseph was placed in removal proceedings and put in Immigration and Customs Enforcement (“ICE”) detention on March 22, 2004. At his hearing, the Immigration Judge found that he is not a national or citizen of the United States but an immigrant and that he is removable, based on his conviction.

10. Mr. Joseph appealed to the BIA, which denied the appeal. Mr. Joseph then filed a Petition for Review in the Third Circuit Court of Appeals, and a Verified Petition for a Writ of Habeas Corpus in the U.S. District Court of New Jersey. In part, Mr. Joseph has claimed a defense of equitable estoppel, that the government should be estopped from taking advantage of its own failure to adjudicate his naturalization applications, and that he should be granted naturalization *nunc pro tunc*.

11. By letter dated December 6, 2004, Mr. Joseph, through his counsel Claudia Slovinsky, submitted a FOIA request to U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement, both agencies within the Department of Homeland Security, for any and all records maintained by the Department of Homeland Security on him.

12. By letter dated December 14, 2004, USCIS acknowledged receipt of the FOIA request. The letter stated that the request had been placed on the “simple track.”

13. By letter dated February 25, 2005, plaintiff through counsel requested that the FOIA request be expedited, as he had not yet received a response, and plaintiff was in detention facing deportation.

14. To date, plaintiff has received no response from USCIS or USICE regarding his initial FOIA request or his request for expedited processing.

15. Several demands have been made to the Department of Homeland Security for copies of his entire administrative file, which includes all past applications for naturalization. These documents are needed to support his equitable estoppel claim. These demands have gone unanswered and been constructively denied.

16. The Assistant U.S. Attorney assigned to the habeas petition in the District of New Jersey has provided selected documents from Plaintiff's administrative file, but has refused to provide Plaintiff with all the documents in his file.

17. Defendants have wrongfully withheld the requested records from plaintiff.

18. Plaintiff Joseph has exhausted any administrative remedies that may exist.

No other remedy exists for Plaintiff to resolve Defendants' delay.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION:**

#### **Violation of the Freedom of Information Act for Failure to Timely Respond to FOIA Request**

19. Plaintiff repeats and realleges paragraphs 1 through 17.

20. Defendants DHS and Secretary Chertoff's failure to timely respond to plaintiff's requests violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(ii), and defendant DHS's own regulations promulgated thereunder, 5 CFR § 5.1 *et seq.*

#### **SECOND CAUSE OF ACTION:**

#### **Violation of the Administrative Procedure Act for Failure to Timely Respond to FOIA Request**

21. Plaintiff repeats and realleges paragraphs 1 through 19.

22. Defendants DHS and Secretary Chertoff's failure to timely respond to plaintiff's requests constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA. Defendants' failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- A. Declare that Defendants' refusal to disclose the records requested by Plaintiff is unlawful;
- B. Order Defendants to disclose the requested records in their entireties and make copies available to Plaintiff;
- C. Award Plaintiff costs and reasonable attorneys fees incurred in this action, as provided by 5 U.S.C. § 552(a)(4)(E); and
- D. Grant such other relief as the Court may deem just and proper.

Dated: July 26, 2005

Respectfully submitted,

s/ CLAUDIA SLOVINSKY (CS-1826)

Law Offices of Claudia Slovinsky

396 Broadway, Suite 601

New York, NY 10013

Telephone: (212) 925-0101

Facsimile: (212) 219-9412

ATTORNEY FOR PLAINTIFF